

amount specified by paragraph (b)(1) of this section.

(ii) "De novo" institutions which elect to have their applications for insurance of accounts processed in accordance with the policy set forth in § 571.6(a)(2) of this Subchapter but which do not additionally qualify under § 571.6(a)(3), shall have, for the period between commencement of operations and the beginning of the first full fiscal year and for three years following the beginning of the first full fiscal year, minimum net worth equal to the sum of the contingency factor plus seven percent of all liabilities; thereafter, upon the approval of the Board, such a "de novo" institution's minimum net-worth shall be equal to the amount specified by paragraph (b)(1) of this section.

§ 563.13 [Amended]

3. Amend § 563.13 by removing the authority citation located at the end of this section.

By the Federal Home Loan Bank Board.
Jeff Sconyers,
Secretary.

[FR Doc. 86-9530 Filed 4-28-86; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 941

[Docket No. 40564-6005]

Fagatele Bay National Marine Sanctuary Regulations

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule and notice of designation.

SUMMARY: This publication includes the final designation of the Fagatele Bay National Marine Sanctuary (Sanctuary) and the final regulations for the Sanctuary. The final designation includes description of: The effect of designation, the area, special characteristics of the area, scope of the regulations, relation of the designation to other regulatory programs, procedures for alterations to the designation and funding. The final regulations define which activities are allowed and which are prohibited within the Sanctuary, the procedures by which persons may obtain permission to conduct activities otherwise prohibited, and the penalties for committing prohibited acts without a

permit. The purpose of designating the Sanctuary is to protect and preserve an example of a pristine tropical marine habitat and coral reef terrace ecosystem of exceptional biological productivity, to expand public awareness and understanding of tropical marine environments, to expand scientific knowledge of marine ecosystems; to improve resource management techniques, and to regulate uses within the Sanctuary to ensure the health and well-being of the ecosystem and its associated flora and fauna.

EFFECTIVE DATE: July 31, 1986. [The expiration of 60 days of continuous session of Congress from date of this publication—see discussion below].

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Foster, Chief, or William Thomas, Assistant Project Manager, Sanctuary Programs Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven Street, NW., Washington, D.C. 20235. (202/634-4236).

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection, Research and Sanctuaries Act of 1972 has been amended twice—once in 1980 and once in 1984 (Pub. L. 92-532 as amended by Pub. L. 96-332 and Pub. L. 98-498, 16 U.S.C. 1431-1439, hereinafter referred to as the Act). The Fagatele Bay National Marine Sanctuary was designated entirely under the process set forth in the 1980 amendments. Thus, initial references in this discussion will be to the current Act and the [bracketed] references to the 1980 provisions followed during the Fagatele Bay designation. Section 303(a) of the Act [section 302(a) of Pub. L. 96-332] authorizes the Secretary of Commerce to designate discrete areas of the marine environment as national marine sanctuaries for the purpose of protecting their conservation, recreational, historical, research, educational, or aesthetic qualities which give them national significance. Section 302(a) of the Act [section 302(f)(2) of Pub. L. 96-332] directs the Secretary to issue necessary and reasonable regulations to control any activities permitted within a designated marine sanctuary. The responsibility for administering the provisions of the Act and its authority has been delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management within the National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce (the Assistant Administrator).

In March 1982, a proposal nominating Fagatele Bay, American Samoa, as a

candidate for marine sanctuary designation, was submitted to the National Oceanic and Atmospheric Administration (NOAA). The recommendation submitted by Governor Peter T. Coleman of American Samoa cited, among other benefits of marine sanctuary designation, the development and implementation of a comprehensive management plan that would serve to: (1) Protect the Bay's natural resources and pristine character; (2) create and enhance public awareness and understanding of the need to protect marine resources; (3) expand scientific examination of marine ecosystems associated with the high islands found in the Pacific, especially coral reefs that have been infested by the crown-of-thorns starfish, and apply scientific knowledge to the development of improved resource management techniques; and (4) allow uses of the sanctuary that are compatible with the sanctuary designation, giving highest priority to nondestructive traditional and public recreational uses.

In April 1982, NOAA placed the nominated area on the List of Recommended Areas (LRA) and, after preliminary public and agency consultation, further declared the area an Active Candidate. After preparation and distribution of an Issue Paper by NOAA's Office of Coastal Zone Management in May 1982, a public workshop was held in American Samoa to solicit additional comments on the feasibility of further considering the site as a national marine sanctuary.

Based on the workshop results and in consultation with other Federal agencies and the American Samoa Government, a decision was made to proceed to the next step toward designation—development of a draft environmental impact statement and sanctuary management plan (DEIS) for the proposed sanctuary. The DEIS, which contained an analysis of the draft regulations, was distributed on October 27, 1983. A public hearing was held in American Samoa on January 18, 1984 to receive testimony on the DEIS. Comments on the DEIS were accepted until January 20, 1984. The major concern voiced by persons testifying at the public hearing was that the proposed boundary and restrictions on commercial fishing may adversely affect some commercial fishermen who use the outer portion of the bay to fish when other waters may be too rough. After consultation with the American Samoa Development Planning Office and the Office of Marine Resources, the boundary of the sanctuary was divided into zones, allowing commercial fishing

in the outer half of the bay. These changes were reflected in the draft regulations. There were no other substantive written or verbal comments generated by the public hearing. Comments received by the NOAA on the DEIS were reviewed and, where appropriate, were incorporated into the final environmental impact statement and management plan (FEIS).

The draft regulations were published on December 4, 1984 (49 FR 47415) and comments were accepted until February 4, 1985. One reviewer noted the lack of definitions and suggested that certain definitions be added. Thus, the following terms have been included in the final regulations and defined: "benthic community", "commercial fishing", "cultural resources", "designation", "director", "the management plan", "permit", "permittee", "persons", "the Sanctuary", "sanctuary manager", and "Secretary". There were no other major comments.

Inasmuch as the Secretary was proposed under the Act as amended in 1980 (Pub. L. 96-332), Congress determined that it would not be necessary for these regulations and Notice of Designation to be transmitted to and reviewed by Congress under the new amendments to the Act (Pub. L. 98-498) (See House Report No. 98-187, 98th Congress, 1st Session, page 24; exempting from the new Congressional review procedures any proposed sanctuary for which the public comment period on the Draft Environmental Impact Statement has closed prior to the effective date of the 1984 amendments to the Act). Hence, the Congressional review provisions of the Act as amended in 1980, Pub. L. 96-332, apply to the designation of the Sanctuary.

Accordingly, these implementing regulations and Notice of Designation shall be transmitted to Congress, and to the Governor of American Samoa, and shall take effect on July 31, 1986, the expiration of a review period of sixty (60) days of continuous session of Congress beginning on April 30, 1986, unless the Governor of American Samoa certifies to the Secretary before the end of the 60-day period beginning from the date of this publication that the designation or any of its terms is unacceptable.

Although the 1980 amendments to the Act provided a procedure for Congressional disapproval of the regulations through adoption of a concurrent resolution by both Houses of Congress, the Supreme Court has since held that such disapproval procedures are unconstitutional (*INS v. Chada*, 462 U.S. 919, 103 S. Ct. 2764 (1983)). NOAA will follow the ruling in *INS v. Chada* in

this final rule making and treat the Congressional disapproval procedure of Pub. L. 96-332 as a "report and wait" provision. NOAA will publish a notice of the effective date of these final regulations on July 31, 1986.

Other Matters

(A) Classification Under Executive Order 12291

Executive Order 12291 (E.O. 12291) defines a "major rule" as "any regulation that is likely to result in: (1) An annual effect on the economy of \$100,000,000 or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete in domestic or export markets." The major activities supported by the area within the proposed sanctuary consist of small-scale recreational and subsistence activities.

Most of the activities in the proposed sanctuary are not affected by sanctuary regulations; the economic impacts on affected activities are minor and the regulations do not restrict recreational activities. Because the impact of the regulations on economic interests is minor or because the activities are not regulated at all, the Assistant Administrator has determined that this is not a "major rule" under E.O. 12291.

(B) Regulatory Flexibility Act Analysis

A Regulatory Flexibility Analysis is not required for this notice of rulemaking. These regulations set forth which activities are allowed and which are prohibited in the proposed Fagatele Bay National Marine Sanctuary; the procedures by which persons may obtain permits for activities otherwise prohibited; and the penalties for committing prohibited acts without a permit. These rules do not directly affect "small government jurisdictions" as defined by Pub. L. 96-354, the Regulatory Flexibility Act, and the rules will have no effect on small business. For the same reasons, the General Counsel has certified to the Small Business Administration that the regulations will not have a significant economic impact on a substantial number of small entities within the area of the proposed sanctuary under the Regulatory Flexibility Act.

(C) Paperwork Reduction Act of 1980 (Pub. L. 96-511)

This rule contains a collection of information requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The collection has been approved by the Office of Management and Budget under control number 0648-0141.

The Designation Document

The Act and NOAA's general marine sanctuary regulations (15 CFR Part 922, 44 FR 44831, July 31, 1979) provide that the management system for a marine sanctuary will be established by two documents, a Designation Document and the regulations issued pursuant to sections 303(a) and 304 of the Act. The Designation Document will serve as a constitution for the Sanctuary, establishing among other things the purposes of the Sanctuary, the types of activities that may be subject to regulation within it, and the extent to which other regulatory programs will continue to be effective. Thus the Designation Document for the Fagatele Bay National Marine Sanctuary as published in the Final Environmental Impact Statement (Notice of Availability, 49 FR 28613, 6/13/84) is as follows:

Final Designation Document

Designation of the Fagatele Bay National Marine Sanctuary

Preamble

Under the authority of the Marine Protection, Research and Sanctuaries Act of 1972, Pub. L. 92-532, (the Act) certain waters off American Samoa are hereby designated a National Marine Sanctuary for the purposes of preserving and protecting this unique and fragile ecosystem.

Article 1. Effect of Designation

The designation of the Fagatele Bay National Marine Sanctuary (the Sanctuary) described in Article 2, establishes the basis for cooperative management of the area by the Territory of American Samoa (Territory) and the National Oceanic and Atmospheric Administration (NOAA).

Within the area designated as the Sanctuary, the Act authorizes promulgation of such regulations as are reasonable and necessary to protect the values of the Sanctuary. Article 4 of the Designation lists those activities which may require regulation, but the listing of any activity does not by itself prohibit or restrict it. Restrictions or prohibitions may be accomplished only through

regulation, and additional activities may be regulated only by amending Article 4.

Article 2. Description of the Area

The Sanctuary consists of 163 acres, (.25 square miles) of bay area off the southwest coast of Tutuila Island, American Samoa. The precise boundaries are defined by regulations.

Article 3. Special Characteristics of the Area

The Sanctuary contains a unique and vast array of tropical marine organisms, including corals and a diverse tropical reef ecosystem with endangered and threatened species, such as the hawksbill and green sea turtles, and marine mammals like the Pacific bottlenose dolphin. The area provides exceptional scientific value as an ecological, recreational, and aesthetic resource and unique educational and recreational experiences.

Article 4. Scope of Regulation

Section 1. Activities Subject to Regulation. In order to protect the distinctive values of the Sanctuary, the following activities may be regulated within the Sanctuary to the extent necessary to ensure the protection and preservation of the coral and other marine values of the area:

- a. Taking or otherwise damaging natural resources.
- b. Discharging or depositing any substance.
- c. Disturbing the benthic community.
- d. Removing or otherwise harming cultural or historical resources.

Section 2. Consistency with International Law. The regulations governing the activities listed in Section 1 of this Article will apply to foreign flag vessels and persons not citizens of the United States only to the extent consistent with recognized principles of international law, including treaties and international agreements to which the United States is signatory.

Section 3. Emergency Regulations. Where essential to prevent immediate, serious, and irreversible damage to the ecosystem of the area, activities other than those listed in Section 1 may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which an appropriate amendment of this Article will be proposed in accordance with the procedures specified in Article 6.

Article 5. Relation to Other Regulatory Programs

Section 1. Other Programs. (a) NOAA

may adopt all regulatory programs pertaining to fishing, including any regulations promulgated by the American Samoa Government and all permits, licenses, and other authorizations issued pursuant thereto under the following conditions:

(1) No alteration or modification of any Sanctuary regulation shall become effective without the written concurrence of both the Territory and NOAA; and

(2) The Territory shall be responsible for enforcing all Sanctuary regulations to ensure protection for the values of the Sanctuary. NOAA will engage in enforcement activities only if requested by the Territory or if there has been significant failure to provide adequate enforcement as determined under this Section.

(b) Where the Territory shall propose any alteration or modification of the regulations described in Article 4, such alteration or modification shall be submitted to NOAA for agreement and simultaneous proposal in the **Federal Register**. Such alteration or modification shall be finally adopted unless, based on the comments received on the **Federal Register** notice and after consultation with the Territory, NOAA determines that the regulations with the proposed amendments do not provide reasonable and necessary protection for the values of the Sanctuary.

(c) Should NOAA preliminary determine that there has been significant failure to provide adequate enforcement, it shall notify the Territory of this deficiency and suggest appropriate remedial action. If, after consultation, NOAA and the Territory are unable to agree that a deficiency exists or on an appropriate remedial action, NOAA may issue a final determination in writing specifying the deficiency and the appropriate action together with the reasons therefore. No less than sixty (60) days prior to issuing a final determination that calls for NOAA to take enforcement action, NOAA shall submit the proposed determination to the Governor of American Samoa. If the Governor finds that NOAA enforcement is unnecessary to protect the values of the Sanctuary, the Governor shall inform NOAA of his objections within thirty (30) days after receipt of the proposed determinations and NOAA shall give such finding presumptive weight in making its final determination.

(d) All applicable regulatory programs will remain in effect, and all permits, licenses, and other authorizations issued pursuant thereto will be valid within the Sanctuary unless inconsistent with any

regulation implementing Article 4. The Sanctuary regulations will set forth any certification procedures.

Section 2. Defense Activities. The regulation of those activities listed in Article 4 shall not prohibit any activity conducted by the Department of Defense that is essential for national defense or because of emergency. Such activities shall be conducted consistently with such regulations to the maximum extent practicable. All other activities of the Department of Defense are subject to Article 4.

Article 6. Alteration to this Designation

(a) This designation may be altered only in accordance with the same procedures by which it has been made, including public hearings, consultation with interested Federal and Territorial agencies and the Western Pacific Regional Fishery Management Council, and approval by the Governor of American Samoa and the President of the United States.

Article 7. Funding

In the event that a reduction in the funds available to administer the Sanctuary necessitates a reduction in the level of enforcement provided by the Territory, the resulting reduced level of enforcement shall not, by itself, constitute a basis for finding deficiency under Article 5, Section 1.

[End of Designation Document]

Before any additional activities may be regulated on other than an emergency basis, the Designation must be amended through the entire designation procedure including public hearings.

List of Subjects in 15 CFR Part 941

Administrative practice and procedure, Environmental protection, Marine resources, Natural resources.

Dated: April 23, 1986.

Paul M. Wolff,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program

Accordingly, 15 CFR Part 941 is added as follows:

PART 941—FAGATELE BAY NATIONAL MARINE SANCTUARY REGULATIONS

- | | |
|-------|-----------------------|
| Sec. | |
| 941.1 | Authority. |
| 941.2 | Purpose. |
| 941.3 | Scope of regulations. |
| 941.4 | Boundaries. |
| 941.5 | Definitions. |

Sec.

- 941.6 Management and enforcement.
 941.7 Allowed activities.
 941.8 Activities prohibited or controlled.
 941.9 Other authorities.
 941.10 Penalties for commission of prohibited acts.
 941.11 Permit procedures and criteria.
 941.12 Appeal of permit action.

Authority: Title III of Pub. L. 98-498, 16 U.S.C. 1431-1439. (Pub. L. 92-592 as amended by Pub. L. 96-332 and Pub. L. 98-498)

§ 941.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of section 303(a) of the Marine Protection, Research and Sanctuaries Act of 1972, (the Act), 16 U.S.C. 1433; (Pub. L. 98-498). The following regulations are issued pursuant to Title III of the Act.

§ 941.2 Purpose.

The purpose of designating the Fagatele Bay National Marine Sanctuary is to protect a unique deepwater terrace formation and a coral reef ecosystem representative of the warm water tropical Pacific Islands in its natural state and to regulate uses within the Sanctuary to ensure the health and integrity of the ecosystem and its associated flora and fauna.

§ 941.3 Scope of regulations.

The provisions of this Part apply only to the area defined by regulation as the Fagatele Bay National Marine Sanctuary (the Sanctuary). Neither these provisions nor any permit issued under its authority shall be construed to relieve a person from any other requirements imposed by statute or regulation of the Territory of American Samoa or of the United States. In addition, no statute or regulation of the Territory of American Samoa shall be construed to relieve a person from the restrictions, conditions, and requirements contained in this Part.

§ 941.4 Boundaries.

The Sanctuary is a 163-acre (.25 sq. mi.) coastal embayment formed by a collapsed volcanic crater on the island of Tutuila, American Samoa. The site is divided into two Subzones, A and B, and includes Fagatele Bay in its entirety up to mean high high water (MHHW). The seaward boundaries are defined by straight lines between the following points, as approved by the NOAA Charting Services Branch, and the American Samoa Department of Public Works:

Point	Pt. No.	Sub-zone	Latitude	Longitude
Fagatele Point	1-1	A	14°22'15" S	170°46'5" W
Matutuua Benchmark	1-2	A	14°22'18" S	170°45'35" W
Fagatele Point	2-1	B	14°22'15" S	170°46'5" W
Steps Point	2-2	B	14°22'44" S	170°45'27" W

§ 941.5 Definitions.

(a) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration (NOAA).

(b) "Assistant Administrator" means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration, or his or her successor, or designee.

(c) "Benthic Community" means the assemblage of organisms, substrate, and structural formations found at or near the bottom that is periodically or permanently covered by water.

(d) "Commercial Fishing" means any activity that results in the sale or trade for intended profit of fish, shellfish, algae, or corals.

(e) "Cultural Resources" means any historical or cultural feature, including archaeological sites, historic structures, shipwrecks, and artifacts.

(f) "Designation" means the action taken by the Secretary of Commerce, to

prescribe, through a Designation Document and implementing rules and regulations, the terms for establishing the Sanctuary.

(g) "Director" means Director of the Development Planning Office, Territory of American Samoa or the head of any successor agency.

(h) "The Management Plan" means the document that outlines the day-to-day operations of the Fagatele Bay National Marine Sanctuary and includes but is not limited to provisions for Research, Interpretation, Surveillance and Enforcement, and Administration.

(i) "Permit" means any document issued under Federal or territorial authority, signed by an authorized official, and specifying the permitted actions.

(j) "Permittee" means any person issued a valid permit as defined in (i) above and pursuant to the requirements of these regulations.

(k) "Persons" means any private individual, partnership, corporation, or other entity; or any officer, employee,

agent, department, agency or instrumentality of the Federal Government, or any State or local unit of government.

(l) "The Sanctuary" means the Fagatele Bay National Marine Sanctuary.

(m) "Sanctuary Manager" means the person hired by NOAA to manage and operate the Sanctuary.

(n) "Secretary" means the Secretary of Commerce, or his or her successor or designee.

§ 941.6 Management and enforcement.

The National Oceanic and Atmospheric Administration (NOAA) has primary responsibility for the management of the Sanctuary pursuant to the Act. The American Samoa Development Planning Office (DPO) will assist NOAA in the administration of the Sanctuary, and act as the lead agency, in conformance with the Designation Document, these regulations, and the terms and provisions of any grant or cooperative agreement. In accordance with § 922.32(b) of the National Marine Sanctuary Program Regulations, 15 CFR Part 922, NOAA may act to deputize enforcement agents of the American Samoa Government (ASG) to enforce these regulations. If NOAA chooses to exercise this provision, a memorandum of understanding shall be executed between NOAA and the ASG or the person(s) or entity authorized to act on their behalf. Prosecution of violations will be carried out by NOAA in accordance with § 941.10 of these regulations.

§ 941.7 Allowed activities.

All activities except those specifically prohibited by § 941.8 may be carried out within the Sanctuary subject to all prohibitions, restrictions, and conditions imposed by other authorities.

§ 941.8 Activities prohibited or controlled.

(a) Unless permitted by the Assistant Administrator in accordance with § 941.11, or as may be necessary for national defense, or to respond to an emergency threatening life, property or the environment, the following activities are prohibited or controlled in Subzones A and B of the Sanctuary. All prohibitions and controls will be applied consistently with international law. Refer to § 941.10 for penalties for commission of prohibited acts.

(1) *Taking and Damaging Natural Resources.* (i) No person shall gather, take, break, cut, damage, destroy, or possess any invertebrate, coral, bottom formation, or marine plant.

(ii) No person shall take, gather, cut, damage, destroy, or possess any crown-of-thorns starfish (*Acanthaster planci*).

(iii) No person shall possess or use poisons, electrical charges, explosives, or similar environmentally destructive methods.

(iv) No person shall possess or use spearguns, including such devices known as Hawaiian slings, pole spears, arbalettes, pneumatic and spring-loaded spearguns, bows and arrows, bang sticks, or any similar taking device.

(v) No person shall possess or use seines, trammel nets, or any fixed net.

(vi) There shall be a rebuttable presumption that any items listed in these paragraphs found in the possession of a person within the Sanctuary have been used, collected, or removed from within the Sanctuary.

(2) *Operation of Vessels.* (i) No vessel shall approach closer than 200 feet to a vessel displaying a dive flag except at a maximum speed of three knots.

(ii) All vessels from which diving operations are being conducted shall fly in a conspicuous manner the international code flag alpha "A."

(iii) All vessels shall be operated to avoid striking or otherwise causing damage to the natural features of the Sanctuary.

(3) *Discharges.* No person shall litter, deposit, or discharge any materials or substances of any kind into the waters of the Sanctuary.

(4) *Disturbance of the Benthic Community.* Disturbance of the benthic community by dredging, filling, dynamiting, bottom trawling, or any alteration of the seabed shall be prohibited.

(5) *Removing or Damaging Cultural Resources.* No person shall remove, damage, or tamper with any historical or cultural resource within the boundaries of the Sanctuary.

(6) *Taking of Sea Turtles.* No person shall ensnare, entrap, or fish any sea turtle while it is listed as a threatened or endangered species as defined by the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

(7) *Use of Dangerous Weapons.* Except for law enforcement purposes, no person shall use or discharge explosives or weapons of any description within the Sanctuary boundaries. Distress signaling devices, necessary and proper for safe vessel operation, and knives generally used by fishermen and swimmers are not considered weapons for purposes of this subsection.

(8) *Other Prohibitions.* No person shall mark, deface, or damage in any

way, or displace or remove or tamper with any signs, notices, or placards, whether temporary or permanent, or with any monuments, stakes, posts, or other boundary markers related to the Sanctuary.

(b) In addition to those activities prohibited or controlled in accordance with § 941.8(a), the following activities are prohibited or controlled in Subzone A:

(1) *Taking and Damaging Natural Resources.* (i) No person shall possess or use fishing poles, handlines, or trawls.

(ii) Commercial fishing shall be prohibited.

(c) The prohibitions in this section are not based on any claim of territoriality and will be applied to foreign persons and vessels only in accordance with recognized principles of international law, including treaties, conventions, and other international agreements to which the United States is signatory.

§ 941.9 Other Authorities.

No license, permit or other authorization issued pursuant to any other authority may validly authorize any activity prohibited by § 941.8 unless such activity meets the criteria stated in § 941.11(a), (c) and (d), and is specifically authorized by the Assistant Administrator.

§ 941.10 Penalties for commission of prohibited acts.

Section 307 of the Act, 16 U.S.C. 1437, authorizes the assessment of a civil penalty of not more than \$50,000.00 for each violation of any regulation issued pursuant to the Act, and further authorizes a proceeding *in rem* against any vessel used in violation of any such regulation. NOAA will apply to all enforcement matters under the Act the consolidated civil procedure regulations set forth at 15 CFR Part 904.

§ 941.11 Permit procedures and criteria.

(a) Under special circumstances an activity otherwise prohibited by § 941.8 of these regulations may be allowed by permit. The activity must be conducted for research or educational purposes designed to enhance understanding of the Sanctuary environment or to improve resource management decisionmaking. The activity must also be judged not to cause long-term or irreparable harm to the resources of the Sanctuary. A permit may be granted by the Assistant Administrator of NOAA in consultation with the Development and Planning Office.

(b) Any person in possession of a

valid permit issued by the Assistant Administrator in accordance with this section may conduct the specified activity in the Sanctuary if such activity is:

(1) Related to research involving Sanctuary resources;

(2) To further the educational value of the Sanctuary; or

(3) For salvage or recovery operations.

(c) Permit applications shall be addressed to the Assistant Administrator for Ocean Services and Coastal Zone Management, ATTN: Sanctuary Programs Division, National Ocean Service, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, NW., Washington, D.C. 20235. An application shall include a description of all proposed activities, the equipment, methods, and personnel involved, and a timetable for completion of the proposed activity. Copies of all other required licenses or permits shall be attached.

(This information collection has been approved by the Office of Management and Budget under control number 0648-0141)

(d) In considering whether to grant a permit, the Assistant Administrator shall evaluate such matters as:

(1) The general professional and financial responsibility of the applicant;

(2) The appropriateness of the methods being proposed for the purpose(s) of the activity;

(3) The extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary as a source of recreation, education, or scientific information; and

(4) The end value of the activity.

(e) In addition to meeting the criteria in § 941.11(a) and (c), the applicant also must demonstrate to the Assistant Administrator that:

(1) The activity shall be conducted with adequate safeguards for the environment; and

(2) The environment shall be returned to, or will regenerate to, the condition which existed before the activity occurred.

(f) In considering an application submitted pursuant to this Section, the Assistant Administrator shall seek and consider the views of the Sanctuary Manager and Director. The Assistant Administrator also may seek and consider the views of any other person or entity, within or outside of the Territorial Government, and may hold a public hearing, as he or she deems appropriate.

(g) The Assistant Administrator may,

at his or her discretion, grant a permit which has been applied for pursuant to this section, in whole or in part, and subject the permit to such condition(s) as the Assistant Administrator deems necessary. A permit granted for research related to the Sanctuary may include, but is not limited to, the following conditions:

(1) The Assistant Administrator, Director, or their designated representatives may observe any activity permitted by this section;

(2) Any information obtained in the research site shall be made available to the public; and

(3) The submission of one or more reports of the status of such research activity may be required.

(h) A permit granted pursuant to this section is non-transferrable.

(i) The Assistant Administrator may amend, suspend, or revoke a permit granted pursuant to this section, in whole or in part, temporarily or indefinitely if, in his/her view, the permittee has acted in violation of the terms of the permit or regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or permit holder and shall set forth the reason(s) for the action taken. The permittee in relation to whom such action has been taken may appeal the action to the Administrator as provided for in § 941.12.

§ 941.12 Appeal of permit action.

(a) Except for permit actions which are imposed for enforcement reasons and covered by the procedures at Subpart D of 15 CFR Part 904, an applicant for a permit, the permittee, or any other interested person (hereafter Appellant) may appeal the granting, denial, conditioning or suspension of any permit under § 941.11 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed and the reason(s) therefor, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator may request the Appellant to submit such additional information and in such form as will allow action upon the appeal. The Administrator shall decide the appeal using the criteria set out in § 941.11 (a), (c) and (d) and any information relative to the application on file, any information provided by the Appellant, and such other consideration as is

deemed appropriate. The Administrator shall notify the Appellant of the final decision and the reason(s) therefor in writing, normally within 30 days of the date of the receipt of adequate information required to make the decision.

(c) If a hearing is requested, or if the Administrator determines that one is appropriate, the Administrator may grant an informal hearing before a Hearing Officer appointed for that purpose. The Appellant and any other interested persons may appear personally or by counsel at the hearing and submit material and present arguments as determined appropriate by the Hearing Officer. Within 30 days of the last day of the hearing, the Hearing Officer shall recommend a decision in writing to the Administrator.

(d) The Administrator may adopt the Hearing Officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Administrator shall notify the interested persons of his or her decision, and the reason(s) therefor in writing within 30 days of receipt of the recommended decision of the Hearing Officer. The Administrator's decision shall constitute final action by NOAA for purposes of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*

(e) Any time limit prescribed in this Section may be extended by the Administrator for good cause for a period not to exceed 30 days, either upon his or her own motion or upon written request from the Appellant, permit applicant or permittee stating the reason(s) therefor.

[FR Doc. 86-9511 Filed 4-28-86; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Social Security Benefits; Payments to Divorced Spouses

Correction

In FR Doc. 86-7759 beginning on page 11910 in the issue of Tuesday, April 8, 1986, make the following correction:

On page 11910, second column, in the "DATES" paragraph, the last line should have read "submitted by June 9, 1986."

BILLING CODE 1505-01-M

Food and Drug Administration

21 CFR Part 882

[Docket No. 84N-0362]

Neurological Devices; Effective Date of Requirement for Premarket Approval; Implanted Diaphragmatic/Phrenic Nerve Stimulator

Correction

In FR Doc. 86-7722, beginning on page 12100 in the issue of Tuesday, April 8, 1986, make the following correction: On page 12100, in the third column, in the paragraph headed "7. Tissue toxicity", the next to last word in the first line should read "stimulator".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing, Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N-86-1599; FR-2221]

Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of revisions to FHA maximum mortgage limits for high-cost areas.

SUMMARY: This Notice amends the listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act by adding the limits of nineteen designated high-cost areas to the list. Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

DATE: Effective Date: April 29, 1986.

FOR FURTHER INFORMATION CONTACT:

For single family: Brian Chappelle, Director, Single Family Development Division, Room 9270; telephone (202) 755-8720. For manufactured homes: Christopher Peterson, Director, Office of Title I Insured Loans, Room 9160; telephone (202) 755-6880; 451 Seventh Street, SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA) (12 U.S.C. 1710-1749) authorizes HUD to insure mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and combination manufactured homes and lots. The NHA, as amended by the Housing and Community Development Amendments of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, sections 2(b) and 214 of the NHA provide for special high-cost limits for insured mortgages in Alaska, Guam and Hawaii.

The Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181, November 30, 1983) (the 1983 Act) further amended HUD's insuring authority. Of particular interest here are: (1) The authorization to insure condominiums in high-cost areas at the same levels as the high-cost limits for one-family residences insured under section 203(b) of the National Housing Act; and (2) the authorization to increase maximum loan limits under the Title I loan insurance program for combination manufactured home and lot loans and for individual lot loans in high-cost areas, so long as the percentage increase in the maximum loan limit does not exceed the percentage increase made to a one-family residence in the area authorized under section 203(b) of the NHA.

The Department implemented these provisions of the 1983 Act in related documents published in the *Federal Register* on April 11, 1984 (see 49 FR 14332, 14335, 14336), effective May 22, 1984. These documents amended the Department's rules to codify the procedure of announcing high-cost mortgage limits for single-family residences, condominiums, combination manufactured homes and lots and manufactured home lots by notice in the *Federal Register* (see the April 11, 1984 documents, amending 24 CFR 201.1504, 203.18b, 203.29, 234.27, and 234.49). In addition, the documents codified the procedure whereby a party may request an alternative mortgage limit (see the same sections cited above).

On May 22, 1984, the Department published a revised list of areas eligible for "high-cost" mortgage limits, which contained several new features (see 49 FR 21520). First, there was no separate

listing for condominium units, since these limits are now the same as those for other one-family residences. Second, the listing included instructions on how to compute the high-cost limits for combination manufactured homes and lots and individual lots, and specified the special high-cost amounts for manufactured homes, combination manufactured homes and lots and individual lots insured in Alaska, Guam and Hawaii. And, third, it made changes to the list based on a new definition of "metropolitan area".

On December 6, 1984 (49 FR 47657), May 8, 1985 (50 FR 19341), July 24, 1985 (50 FR 30154), November 6, 1985 (50 FR 45993), January 7, 1986 (51 FR 596), and January 10, 1986 (51 FR 1249), the Department published amendments to the "high-cost" mortgage amounts that added additional areas and further increased the limits of several previously designated high-cost areas.

This Document

Today's document adds Hartford County, Connecticut; Chittenden County, New Hampshire; Rockingham County, New Hampshire; Broward County, Florida; the Knoxville, Tennessee MSA, which includes the Counties of Anderson, Blount, Grainger, Knox, Jefferson, Sevier, and Union; and the Nashville, Tennessee MSA, which includes the Counties of Cheatham, Davison, Dickson, Robertson, Rutherford, Summer, Williamson, and Wilson to the list of high-cost areas.

These amendments to the high-cost areas appear in two parts. Part I explains high-cost limits for mortgages insured under Title I of the National Housing Act. Part II lists any changes for single family residences insured under sections 203(b), and 234(c) of the National Housing Act.

Accordingly, the Commissioner hereby amends the list of high-cost mortgage limits by adding the limits for Hartford County, Connecticut; Chittenden County, New Hampshire; Rockingham County, New Hampshire; Broward County, Florida; the Knoxville, Tennessee MSA, which includes the Counties of Anderson, Blount, Grainger, Knox, Jefferson, Sevier, and Union; and the Nashville, Tennessee MSA, which includes the Counties of Cheatham, Davison, Dickson, Robertson, Rutherford, Summer, Williamson, and Wilson, as set forth in Part II of the following Table:

National Housing Act High Cost Mortgage Limits

I. Title I: Method of Computing Limits

A. Section 2(b)(1)(D), Combination

manufactured home and lot (excluding Alaska, Guam and Hawaii): To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of Part II of this list by .80. For example Hartford County, Connecticut, has a one-family limit of \$90,000. The combination home and lot loan limit for Hartford County is \$90,000 \times .80, or \$72,000.

B. Section 2(b)(1)(E), Lot only (excluding Alaska, Guam and Hawaii): To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, Hartford County, Connecticut, has a one-family limit of \$90,000. The lot only loan limit for Hartford County, is \$90,000 \times .20, or \$18,000.

C. Section 2(b)(2), Alaska, Guam and Hawaii limits: The maximum dollar limits for Alaska, Guam and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam, and Hawaii are as follows:

1. For manufactured homes: \$56,700. (\$40,500 \times 140%).
2. For combination manufactured homes and lots: \$75,600. (\$54,000 \times 140%).
3. For lots only: \$18,900. (\$13,500 \times 140%).

II. Title II: Updating of FHA Sections 203(b), 234(c) and 214 Area-Wide Mortgage Limits

REGION I				
Market area design- nation and local jurisdictions	1- family and condo unit	2- family	3- family	4- family
HUD FIELD OFFICE				
Hartford, CT				
Hartford County.....	\$90,000	\$101,300	\$122,650	\$142,650
Manchester, NH				
Chittenden County.....	73,050	82,250	99,950	115,350
Rockingham County.....	90,000	101,300	122,650	142,650
REGION IV				
Coral Gables, FL				
Broward County.....	\$7,400	98,400	119,600	138,000
Knoxville, TN				
Knoxville, TN MSA: Anderson County, Blount County, Grainger County, Knox County, Jefferson County, Sevier County, Union County.....	74,100	83,450	101,400	117,000

REGION I—Continued

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Nashville, TN Nashville, TN MSA: Cheatham County, Davidson County, Dickson County, Robertson County, Rutherford County, Sumner County, Williamson County, Wilson County	86,700	97,650	118,650	136,950

Dated: April 23, 1986.

Silvio J. DeBartolomeis,

Acting General Deputy Assistant Secretary
for Housing-Deputy Federal Housing
Commissioner.

[FR Doc. 86-9552 Filed 4-28-86; 845 am]

BILLING CODE 4210-27-M

ENVIRONMENTAL PROTECTION
AGENCY

40 CFR Part 51

[AD FRL 2927-9]

Air Quality Implementation Plans;
Stack Height Regulations; Petitions
DeniedAGENCY: Environmental Protection
Agency (EPA).ACTION: Notice of denial of petitions for
reconsideration.

SUMMARY: On July 8, 1985 (50 FR 27892), EPA published revisions to rules required under section 123 of the Clean Air Act (Act) to ensure that the degree of emission limitation required for the control of any air pollutant under an applicable State implementation plan (SIP) is not affected by that portion of any stack height which exceeds good engineering practice (GEP) height, or by any other dispersion technique. The American Electric Power Service Corporation (AEP), the Consolidation Coal Company (Consol), and the Ormet Corporation (Ormet) have petitioned the Administrator to reconsider certain portions of the stack height regulations pertaining to the Kammer power plant in West Virginia. The EPA is denying the petitions on the grounds that the petitioners did not submit any new information warranting reconsideration of the rules, and that EPA's previous decisions were correct.

DATE: This determination is effective April 29, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Ginsburg, MD-15, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5540.

SUPPLEMENTARY INFORMATION:**Docket Statement**

The petitions for reconsideration, EPA's detailed responses, provided in a support document for this notice, and all pertinent information concerning the development of the stack height rules have been filed in Docket No. A-83-49. The docket is open for inspection by the public between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, at the EPA Central Docket Section (LE-131), West Tower Lobby, Gallery One, 401 M Street, SW., Washington, DC 20460. Background documents normally available to the public, such as Federal Register notices and Congressional Committee reports, are not included in the docket. A reasonable fee may be charged for copying documents.

Background

Section 123 of the Act requires EPA to promulgate rules to assure that the degree of emission limitation required for the control of any air pollutant under an applicable SIP is not affected by stack heights exceeding GEP height or by any other dispersion technique.

The EPA originally promulgated regulations to implement section 123 requirements on February 8, 1982, at 47 FR 5864. Those regulations were challenged by the Sierra Club Legal Defense Fund, Inc.; the Natural Resources Defense Council, Inc.; and the Commonwealth of Pennsylvania; and on October 11, 1983, the U.S. Court of Appeals for the D.C. Circuit remanded portions of the regulations for reconsideration, reversing two portions, and unholding certain others [*Sierra Club v. EPA*, 719 F.2d 436 (1983)]. The EPA proposed revisions to the stack height rules on November 9, 1984 (49 FR 44878). A public hearing was held on January 8, 1985, after which EPA provided several additional opportunities for supplemental and rebuttal comments. The EPA promulgated final revisions to the rules on July 8, 1985 (50 FR 27892). The final rules contain changes made in response to comments submitted on the proposal.

In September 1985, Ormet, AEP, and Consol filed petitions for reconsideration of these rules. The petition from Ormet and AEP were submitted pursuant to section

307(d)(7)(B) of the Act.¹ However, in the event that EPA found that the rules were not covered by section 307(d), the petitioners requested that EPA treat their petitions as petitions for amendment, repeal, or revision under the Administrative Procedure Act, 5 U.S.C. section 553(e). Consol did not identify a statutory basis for its petition.

Section 307(d) applies only to certain enumerated EPA actions, which do not include the promulgation of regulations under section 123. See section 307(d)(1). Therefore, EPA has decided to treat the petitions as petitions for revision of a rule under section 3(e) of the Administrative Procedure Act, 5 U.S.C. 553(e), which establishes a general right to petition for issuance, amendment or repeal of an agency rule. The standard of review for a petition for revision is whether the petitioner has presented new information that warrants reconsideration of the rule. See generally *Oljato Chapter of Navajo Tribes v. Train*, 515 F.2d 654 (D.C. Cir. 1975). Under this standard, EPA has concluded that these petitioners have presented no new information warranting revision of the stack height rules.

Petitions for Reconsideration

None of the petitions present new factual information. Instead, the petitioners object to certain provisions of the rules, and to modifications thereto, which were made in response to public comments addressing the notice of proposed rulemaking. Particularly, the petitioners object to the application of these provisions to the Kammer power plant in West Virginia, a facility that is owned by the Ohio Power Company, a subsidiary of AEP. In essence, petitioners are challenging EPA's decision to adopt certain parts of its proposed rules and to change others without providing additional opportunity to comment.

The EPA is not required to reconsider its rules in light of such claims. If petitions for revision were to be granted on such grounds, EPA would be required to repropose its rules every time it modified a proposal in response to comments. The Administrative Procedure Act does not require such a result.

¹ Section 307(d)(7)(B) provides that the Administrator shall convene a proceeding to reconsider certain actions enumerated in section 307(d)(1) if a person raising an objection can demonstrate that (1) it was impracticable to raise such objection during the comment period or that grounds for the objection arose after the comment period, and (2) the objection is of central relevance to the rule.